

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4215 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI CHANDULAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR SANJAY M DOSHI for Petitioner

MR SJ DAVE, AGP for respondent No.1-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 20-4-2000, passed by the District Magistrate, Nadiad, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in deciding the representation. Learned counsel for the petitioner has argued that the petitioner sent representation through the jail on 24-4-2000 and same has been received by the authority on 25-4-2000, but till date neither the representation has been decided nor the authority has supplied the documents demanded by the petitioner by way of aforesaid representation. Learned A.G.P. Mr. S.J.Dave upon instruction and after verifying the file submitted that the representation dated 24-4-2000 has been decided on 5-5-2000, but the fact remains that same has not been communicated and documents have not been supplied to the petitioner. Even there is delay of 10 days in deciding the representation for which the petitioner has relied upon a decision reported in upon a decision reported in AIR 1999 SC 884 Rajanmal v. State of Tamil Nadu and another ,wherein it is held as under ;

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 20-4-2000 passed against the detenu is hereby quashed. The petitioner-detenu Rameshbhai Chandulal Shah Dhodhiya Patel is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai